

ATTACHMENT 8
Declaration of Joseph L. Shelnutt

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No.
)	1:23-cv-00853-DII
v.)	
)	
GREG ABBOTT, in his capacity as GOVERNOR)	
OF THE STATE OF TEXAS, and THE STATE OF)	
TEXAS,)	
)	
Defendants.)	
)	

Declaration of Joseph L. Shelnutt

I, Joseph L. Shelnutt, declare, based on my personal observations, the following:

1. I am a Regulatory Project Manager in the Compliance and Enforcement Branch, Regulatory Division, for the U.S. Army Corps of Engineers (Corps), Fort Worth District. My responsibilities include evaluating permit applications under Section 10 of the Rivers and Harbors Act of 1899 and investigating possible unauthorized activities or activities that do not comply with previously issued permits in my Fort Worth District's area of responsibility. That area of responsibility includes Maverick County, Texas.
2. I have a Bachelor of Science degree in Wildlife Science from Auburn University and a Master of Science degree in Environmental Policy and Management from American Public University. Currently, I am also an instructor for wetland delineation in the Great Plains Region.
3. The Rio Grande is a navigable water of the United States and the Corps has listed it on the December 2011 publication of the "Navigable Waters of the United States in the Fort

Worth, Albuquerque, and Tulsa Districts Within the State of Texas.”

4. No harbor lines have been established in the Eagle Pass area of the Rio Grande.
5. On July 10, 2023, I and others from the Corps learned from media reports that Texas had begun to build a floating barrier in the Rio Grande near Eagle Pass. Officials from the International Boundary and Water Commission in Eagle Pass later were able to confirm those reports to the Corps.
6. I checked our records and could find no application from any entity of the State of Texas or a representative of the State for a floating barrier in the Rio Grande in the vicinity of Eagle Pass, Texas. I also did not find a record of a permit issued to Texas that would cover this then-proposed work.
7. The Fort Worth Regulatory Division does not have an office in Eagle Pass and it is located about seven hours from my office in Fort Worth, so I was not able to immediately go to Eagle Pass to investigate.
8. I made a site visit to Eagle Pass to investigate the placement of the floating barrier on July 13, 2023. Neil Lebsock, from the Corps’ Fort Worth District’s Regulatory Division, went with me. We met with a U.S. representative and a Mexican representative from the International Boundary and Water Commission and they accompanied us on the site visit.
9. We observed what appeared to be a staging area for floating barrier construction at Shelby Park in Eagle Pass, Texas. We observed that the park had a heavy Texas DPS presence with controlled access. Some buoys and associated transportation equipment were present at the time, but most of the buoys appeared to have been moved to the installation site.
10. We located the site where the floating buoy barriers were being installed approximately 2.5 miles downstream of the staging area. From the bank, we observed orange spheres, with a four-to-six-foot diameter, being installed in shallow water of the Rio Grande with the use of

an excavator, supported by individuals standing on the riverbed, two airboats, and barge type watercraft. Around 450 feet of buoys had been installed. Although no cables or concrete blocks were observed at the time, the upstream portion of the installed buoys were stationary and were not held in place by equipment nor individuals and appeared to be anchored in place on the immediate riverbed. The approximate latitude and longitude of the work in the Rio Grande was 28.6709, -100.5030. We documented our observations with several photographs.

11. This is a photograph of the work on the floating barrier we witnessed during our site visit. I took the photograph:



12. This is a photograph of the excavator working on installing the buoys that we witnessed during our site visit. Neil Lebsock took the photograph:



13. My on-site observations confirmed that this floating barrier structure in the Rio Grande would need authorization from the Corps under Section 10 of the Rivers and Harbors Act of 1899.

14. After I returned from the site visit, I re-confirmed based on the specific location I observed that the Corps had not received an application for the floating barrier work from Texas or

any State representative and that we had not issued a permit to Texas for that work. Since Texas did not apply for a permit from the Corps under Section 10 of the Rivers and Harbors Act of 1899, we were unable to determine, among other things, the exact methods of construction and whether the floating barrier was sufficiently anchored to ensure it remained in place. Also, we are unable to evaluate any overall effects from the floating barrier on public safety, use of the Rio Grande in that area, and other public interest factors.

15. The placement and tandem configuration of the buoys, which allows them to move somewhat independently even though they are connected, present a structural barrier to cross-river navigation and would force a vessel to maneuver around the structure to avoid collision or entanglement at this location.

16. Additionally, because no information was submitted for project evaluation and potential permitting, it is unknown if the structure meets engineering standards to withstand predicted high flows. Should segments of the structure, or the entire structure, become unmoored from its location and travel downstream, further risks to navigation and safety could reasonably be assumed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 25, 2023, in Fort Worth, Texas.

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Joseph L. Shelnutt